

Harpswell Board of Appeals
Minutes of March 24, 2010

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Attendance: Ned Simmons, Chair, John Perry, Jim Knight and Ellen Lebauer. Code Enforcement Officer William Wells and Recording Secretary Melissa Moretti were also in attendance.

The meeting had been duly advertised in the Brunswick *Times Record*. Ned Simmons, Chair, called the meeting to order at 6:30 PM at the Harpswell Town Office, 263 Mountain Road, Harpswell. The Chair reviewed the Agenda, introductions were made of Board members and procedures were explained.

Old Business

There was no old business to discuss.

New Business

1. Matter of Peter R. Coughlan, Administrative Appeal, Map 30 Lot 136, 34 Lowell's Cove Rd., Orr's Island
Participating in Hearing – The Board members present and William Wells, Code Enforcement Officer

Mr. Coughlan addressed the Board and stated that he wished to appeal the ruling of the Board of Selectmen (the "Selectmen"). He explained that there were two barrels on the property that collected graywater; he wanted to replace them with a 500 gallon tank. He gave brief history of the issue, referred the Board to their information and said he just wanted to upgrade the graywater system; the use of the property would remain unchanged.

Mr. Wells addressed the Board and said Mr. Coughlan had presented to the Code Enforcement Office a Subsurface Wastewater Disposal System Application ("HHE-200") designed by Soils Engineer Steve Robbins to install a concrete holding tank that could be pumped in lieu of the existing two bait barrels. Mr. Wells mentioned the Board's site visit, and said he had done some research on his own as the approving LPI (Licensed Plumbing Inspector). He said he had discovered a "minimal amount of plumbing" at the site; he had also found out from the neighborhood that the cottage had existed from about the 1920's and had been sporadically lived in since the 1960's. He decided to issue the permit; there was also one issued from the State. Mr. Wells explained there was an ordinance that required any holding tank to be approved by the Selectmen. He referred the Board to his memo to them. The Chair asked about the ordinance that mentioned review by the Selectmen; Mr. Wells said it was in the State plumbing code, within the subsurface wastewater code. He referred to his copy of the Maine Subsurface Wastewater Disposal Rules (the "Rules"), Chapter 5; he stated there was "no such thing as an art studio in the State guidelines." He explained that the site evaluator had checked with the State and concluded that it had to fit into the code. It was clarified that the property had been grandfathered as a seasonal cottage, and had been occupied as late as 2009 on weekends.

The Chair expressed uncertainty whether the Board had the authority to overrule a decision made by the Selectmen. Mr. Knight (a past member of the Board of Selectmen) said he remembered granting permissions for "things like this," but could not recall specifics. There was discussion regarding the Board's powers. The Chair said he had called the Town Administrator the week prior to the meeting to ask if the Board could get a legal opinion; she said she "would prefer to wait to see what happened at the meeting." The Chair expressed the opinion that the matter should go back to the Selectmen. There was discussion. Mr. Wells said the Assessing Dept. had records on the property; it was listed with no plumbing. Mr. Wells said he had photographs, as well as affidavits from Mr. Coughlan, his family members and neighbors that stated the property had been occasionally occupied; he gave the Board the documents.

Mr. Coughlan said the Selectmen referred to the property as an "art studio." He explained that the previous person who lived there had been an artist, and it was both her art studio and her residence. Mr. Perry asked if she had lived there year 'round; it was clarified that it was only summer, and that it was not a year 'round property. The Chair suggested the Board table the matter unless the Applicant was anxious for a decision; the Board could ask the Town for a legal opinion.

Mr. Knight referred to a diagram from his information with reference to the approximate high water mark and an existing wooden deck where the barrels rested. There was discussion about the distance between the deck and the high water mark. Mr. Knight confirmed with Mr. Wells that the same information had gone to the State. Mr. Knight commented on the site evaluator's stipulation of the proposed tank to be placed on a concrete pad which was a condition of approval. Mr. Wells described how it would be attached to the ledge. Mr. Knight confirmed with Mr. Wells that the lot was very small and there would be no room "for any other activity related to this."

The Chair confirmed with Mr. Wells that the matter had been before the Selectmen "two or three times;" Mr. Wells said he didn't know where else to send Mr. Coughlan but the Board of Appeals. Ms. Lebauer asked how the Selectmen came up with the label "art studio;" Mr. Wells said he didn't know; he had approved it as a seasonal residence. It was presumed by Mr. Wells that the Selectmen did not want anyone living there.

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The Chair asked Mr. Coughlan how urgent it was for him to get the project completed. Mr. Coughlan explained he wanted the process to be easier. There was discussion with Mr. Coughlan about how to proceed with the matter. He said he didn't have any objection to waiting a month for the Board to get a legal opinion. The Chair explained to Mr. Coughlan that the Board had concise duties and that the ordinance did not give them the power over decisions made by the Selectmen; there was further explanation. Mr. Perry clarified that, if the Board tabled the matter, Mr. Coughlan would have to return to the Board of Appeals, not the Selectmen. The date of the next meeting was discussed.

Mr. Perry asked Mr. Wells if his documents might contain something that would be more acceptable, either to the State or Selectmen, in terms of usage. Mr. Wells said the only thing he could see as a possibility might be "an assembly area," which was "a stretch;" it had rental cabins and cottages. He said Mr. Coughlan "was reluctant to go down that avenue." Mr. Coughlan addressed the Board, and said he had written the Selectmen a letter that traced the usage "from 1950 on." They said "it would revert to its previous use as an art studio;" Mr. Coughlan said "that statement is incorrect." It was confirmed that he had presented the property to the Selectmen as a summer residence and not as an art studio; Mr. Coughlan stated "they came up with the art studio." There was discussion about how the definition of "art studio" might have come about. Mr. Wells said that, if the property could not comply with Chapter 5 of the Rules, then he could not approve it and neither could the State; he reiterated that both he and the State had approved it as a summer residence.

Mr. Perry asked the Chair if the Selectmen had the authority to override prior use if it had been in continuous use and had been grandfathered. There was discussion. The Chair reiterated the question of whether the Board had jurisdiction to override the decision of the Selectmen, and if the Board would have jurisdiction to alter the name given by the Selectmen, and if they would have the right to change the usage. Mr. Wells referred to the form HHE-233, a document that "accompanies any holding tank;" he read the portion that pertained to the participation of municipal officers. There was discussion about how a holding tank approval matter would get to the Selectmen. Mr. Wells stated there were "municipalities that had holding tank ordinances," and explained that some places had a "lack of area for a subsurface disposal system," i.e. "a lakeside, etc."

The Chair clarified three questions the Board had: "1) does the Board of Appeals have jurisdiction to overrule the Selectmen's decision, 2) can the Selectmen apply conditions, such as requiring a change of use, as they have in this case, and 3) if the Board of Appeals does not have jurisdiction, what is Mr. Coughlan's route of appeal?" Mr. Wells said there was "a section where the LPI can impose certain conditions;" he read from the Rules the conditions that had to be met: "1) a conventional system is not possible, 2) public sewer is not available, and 3) water conservation has to be sought after," i.e. low flush fixtures, etc. He commented that the matter was "a bit unusual."

Mr. Coughlan addressed the Board and stated that the Selectmen had approved the use of the tank. There was discussion. Mr. Knight moved to table the issue until the Board's next regularly scheduled meeting pending overview and advice from the Town's attorney. Mr. Perry seconded. The Board voted 4-0 to table the matter.

2. Matter of The Modular Advantage/Kathleen J. Littlefield, Administrative Appeal, Map 51 Lot 149, 12 Aucocisco Ln., Harpswell Participating in Hearing – The Board members present and William Wells, Code Enforcement Officer

David C. Pierson, an attorney from the law firm of Eaton Peabody in Brunswick, addressed the Board. He stated he represented both Ms. Littlefield and The Modular Advantage in the appeal. He referred to a letter that had been distributed to the Board at the meeting dated March 22, 2010. He corrected a "mis-statement" in the fourth paragraph of the letter; the modular home had been set on the lot on December 18th, not shortly after Christmas. He gave the history of the matter; that it had gone before the Board twice before and there had been two issues: 1) there were some site work issues identified by the DEP and there has been a permitting process to correct them "which is ongoing," and 2) the problem with the original septic system design that was defective. Mr. Wells had revoked that permit and they were "still working on getting an approved system." He said the system had been approved by the Dept. of Health and Human Services ("DHHS") and a neighbor had requested a formal hearing before DHHS that was held in October. A decision was issued that approved the design with some changes; that decision was appealed and there was an administrative appeal before a hearing officer a week ago.

Mr. Pierson explained that the previous two meetings had regarded whether the building permit would be revoked and whether a Stop Work Order ("SWO") would be issued (at that time). He said the home had been finished last June and had been sitting at the manufacturer's facility in Canada and had put "considerable pressure on The Modular Advantage to get it out of there." Mr. Pierson commented on the monetary exchange rate in Canada, and also on certain issues contained within the contract between The Modular Advantage and the manufacturer.

Mr. Pierson said that there had been a meeting earlier in the year between The Modular Advantage and the Town, and an SWO had been issued. He said they had attempted to discover what would have to be done to bring the project into compliance. He said it was understood

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that compliance would include a septic permit issued for a subsurface wastewater disposal system approved by the Town. Mr. Pierson alluded to e-mail communications with Mr. Wells [ref. Board packet materials] and said there had not been any "plan of correction" and they did not know "exactly" what the violations were. He stated that the SWO listed ordinances but nothing was identified with regard to what constituted a violation of those ordinances. Mr. Pierson read [from the Basic Land Use Ordinance ("BLUO"), §13.6.2] with regard to the requirements of a violation and said that, "from a legal perspective, the SWO was invalid" because it did not meet the requirements of the ordinance. He said "from a practical perspective" they wanted to know exactly what they had to do to bring the property into compliance, i.e. have an agreed upon list and do that work.

Mr. Knight asked for clarification of a comment by Mr. Pierson which was, that another SWO would be issued within a day or two if the Board granted their appeal at the meeting. Mr. Pierson stated there was "a technical problem" with the ordinance, and he would assume another SWO would be issued that complied with the ordinance. The Chair clarified with Mr. Pierson that their request was for a list of the problems and how to fix them. The date of the issuance of the SWO was stated to be January 13, 2010. Mr. Pierson distributed additional information to the Board (Appellant Exhibit C) which was a copy of the SWO and an e-mail from Mr. Wells to Dennis Douglass of The Modular Advantage.

Mr. Perry wanted to know what further work they would plan to do if the SWO was not in place. Mr. Pierson said "the intent was only" to do the work necessary to make it weather tight and to do the work the DEP required. Mr. Wells had given permission for The Modular Advantage to do those things; the work done would "basically maintain the status quo." Mr. Douglass of The Modular Advantage addressed the Board and explained that he would not continue any further construction of the site if a septic plan did not get approved and he had no intention of going any further other than to maintain the house from incurring more damage. Mr. Douglass commented on the "major wind storm a few weeks ago" and said Mr. Wells had let him fix water damage and roof shingles. Mr. Pierson stated those things were done "in order to maintain the house in as undamaged a state as possible." Mr. Douglass said they had done work that was required by the DEP, i.e. put in a culvert. He stated the SWO said they could finish the DEP work "as soon as frost is out;" the DEP has approved the work they had done already. Mr. Douglass referenced a DEP approval letter he had with him which gave dates required for completion of the DEP work. Mr. Pierson asked for further questions from the Board; there were none.

Mr. Wells addressed the Board and said that the SWO cited seven sections of both the BLUO and the Shoreland Zoning Ordinance; he gave brief explanation of what each section addressed. Mr. Knight referred to the e-mails distributed to the Board earlier; Mr. Wells confirmed they did not address the ordinance violations and they were between Mr. Douglass and the Code Enforcement Office. Mr. Wells referenced his memo to the Board and said he understood they had a verbal agreement since last May that "there wouldn't be any work." He posted the building in December so there would not be any misinterpretation or any further work done; however, they were still able to do DEP work and work to keep the building weather tight. Mr. Wells didn't "think anyone should move forward until all approvals are in place." Mr. Wells explained that he would issue an SWO and post the premises when he "was not getting any cooperation" with regard to a violation. Mr. Knight asked if, when an SWO was posted on site, that was the "standard method of communicating the violations enumerated." Mr. Wells stated that "the Town attorney did that."

The Chair confirmed that the violations listed on the SWO related to the septic or the DEP issues. Mr. Wells said the Town attorney had a copy of the submitted HHE form that was "currently under scrutiny." He thought there might be "extra conditions imposed on that" that would not actually be from him. Mr. Wells confirmed he could not say he "sought the advice" of the Town attorney; however, he had received their advice "and that was what he was told to do by the Town attorney." Mr. Wells thought the fact that the building had been erected on the foundation was a "misinterpretation;" his opinion was that "it was financially driven."

Mr. Perry asked Mr. Wells about the dates mentioned in e-mails with regard to placement of the building. Mr. Wells stated the building had been put in place while he was out of town last December; he had also had phone conversations with Mr. Douglass who "indicated it was financially driven." He said "at that time, it had not been officially approved" and was still not. The Chair asked if he could supply the enumerated list of requirements the appellants asked for. Mr. Wells responded "I don't think I can." He explained it would "be enough" for him but may not satisfy other parties, i.e. the DEP, the State, the Town attorney, the Board of Selectmen and the Administration Dept. The Chair understood the best course of action would be to get a plumbing permit, and satisfy the DEP. He confirmed with Mr. Wells that the SWO could be withdrawn once the septic and DEP issues were resolved. The Chair asked if he could write them a letter to that effect; Mr. Wells responded that he had communicated it "in various writings," U.S. Mail, etc. He said he was "OK with the DEP" although he did not have anything from them in writing, and said the septic was still in the appeal process. He explained the system had been approved on the local level and the State level, but had been appealed at the State level for (he thought) the third time to the Attorney General's Office (appeal was by an abutter).

Mr. Knight asked Mr. Pierson for clarification with regard to his earlier statement about approval by May. The process of appeals on the

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State level was explained with regard to the matter. There was discussion; Mr. Pierson said he believed the Town could approve the septic system design while the appeals were in process, but they chose not to. The Chair asked Mr. Pierson if they would be satisfied with a letter from the Code Enforcement Office that stated how the SWO could be satisfied. Mr. Pierson responded “absolutely” and referred to Appellant Exhibit A, a letter from Mr. Douglass to Mr. Wells dated March 11, 2010.

Mr. Knight stated the matter as he understood it, and confirmed with Mr. Wells that the septic system had been approved by both the Town and State, but was in the appeal process. Mr. Wells said he had “been instructed” not to go forward until the “final appeal is totally exhausted.” The Board discussed the letter of March 11, 2010 and that Mr. Wells had declined to sign the included agreement verbiage. Mr. Wells referred again to the violations on the SWO. The Chair read §13.6.2 of the BLUO; Mr. Wells said he would not sign anything they had composed. The Board asked if he could write a letter that enumerated the issues listed on the SWO; he said he could.

Mr. Pierson said “that simply citing that you violated an ordinance” didn’t say what you did to violate it or, “as your ordinance requires, what you need to do to bring it back into compliance.” He said all they needed was a permit for the septic system and to do what the DEP required. Mr. Pierson said he used to do work for the City of Lewiston and had addressed “a lot of code enforcement issues;” he gave a case history. He stated that they thought they knew what the Town wanted, but the Town “won’t tell us.” He said Mr. Wells was at a disadvantage because “the Town Attorney and other Town personnel have told him he couldn’t exercise his discretion in this instance.” Mr. Pierson reiterated the legal argument that the SWO was invalid.

There was discussion between the Chair and Mr. Pierson with regard to how the Board could proceed. Mr. Pierson reiterated they just wanted to know what it would take “to get it right.” Mr. Knight commented about Mr. Pierson’s earlier analogy of “a sword of Damocles” hanging over his client’s head. He referenced the Board of Appeals Application form, No. 4 “Appealing the issuance of a ‘Stop Work Order.’” He said that, in his opinion, “the scope of the Board’s ability to manage” the matter would be to reverse the decision of the Code Enforcement Officer to issue the SWO, or not. There was discussion with regard to the Board’s authority. Mr. Pierson said the Board had the authority to overrule the Code Enforcement Officer with regard to the issuance of the SWO. He stated he thought the Board could also have “the parties reach an agreement that moots the appeal” so it would be withdrawn; he considered that the Board’s “moral power.” The Board’s “legal power” would be a straightforward “yes” or “no.” Mr. Pierson summarized, and stated the SWO did not meet the Town’s ordinance requirements because it did not have a list that specified what the problems were and what should be done to correct them. He also said it did not meet the “basic due process requirements the Maine State Supreme Judicial Court had imposed on notices of violation.”

Mr. Wells addressed the Board and said he would “give it to them in writing,” if that’s what they wanted; “they knew exactly what the issues” were and always knew what the issues were. He said he never agreed to the placement of the modular home on the foundation; they claimed that he had. He said if he put something in writing, it would include the “caveat” that, although he may lift this particular SWO, that there might be other Sows. It was clarified with the Board that a letter “would not get anyone off the hook for anything.” Mr. Pierson addressed the Board, and stated “we believe, but we don’t know, that complying with the DEP and getting a septic system permit” would cure the alleged violations on that SWO. He said he would withdraw the appeal “right now” if the Board took a break and Mr. Wells wrote a letter.

Mr. Knight interjected that the Board did not have the authority to tell Mr. Wells “to do, or don’t do, anything;” they only had the authority to lift the SWO or keep it in place. There was discussion among the Board. Mr. Pierson stated his understanding that Mr. Wells agreed that the SWO issued in early January would be lifted once a valid septic system permit was issued by the Town and once The Modular Advantage completed all the work required by the DEP to cure the violations that it identified; Mr. Wells said the statement was “a fair and correct assumption.” Mr. Pierson stated “based on that, The Modular Advantage withdraws its appeal;” he thanked the Board.

3. Matter of Orr’s Island Library, Variance Request, Map 30 Lot 76, 1699 Harpswell Islands Rd., Orr’s Island
Participating in Hearing – The Board members present and William Wells, Code Enforcement Officer

Peg Ontario, President of the Orr’s Island Library (“the Library”) Board of Trustees, addressed the Board. She reminded the Board that the Library had previously been before them [February 25, 2009] to request “a series of variances so they could commence construction on a much needed addition to the Library;” the Board had granted their requested variances at that time. The addition was constructed; however, a recent survey showed the addition was over the setback requirement on the southern boundary. Ms. Ontario introduced Tom Brudzinski, another member of the Board, who had been with the project “over two years.”

Mr. Brudzinski addressed the Board; he gave history of the project and provided the Board a handout. He referred them to the boundary survey of the handout and explained there had been a previous boundary issue with an abutting property that belonged to the Graybills. He explained the Graybills was the “confusing property;” there had been “a switch” granted on the south side which had created a need for the

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previously granted variance. He said when the house had been built it exceeded the 20 ft. minimum setback to the Graybill's property line. He referred the Board to the artist's rendering of the handout and identified the original Library structure and the two additions.

Mr. Brudzinski said the Board had granted the four variances they had previously asked for, and explained. He said one of the conditions of one of the variances was that the Library should go before the Planning Board, which had been done. Mr. Wells confirmed (from the audience) that the Planning Board had the opportunity to take jurisdiction at that time, and chose not to. They had gone before the Planning Board in August and then applied for their building permit. He said it was a design/build project with Harborside/Fine Lines, a construction company "with a design component." They had informed the Library the project was subject to review by the Dept. of Public Safety; the design was submitted to the State; they added additional design elements: parts of the building, the stairs and the ramps. Their approval was received the third week of October. In January, 2010, the Library was notified by a bank survey that the addition had extended into the reduced setback area the Board had previously approved.

Mr. Brudzinski explained there were two parts to the issue: 1) the overhang "which is about two-thirds of the problem." Their "honest explanation for that, after reading the ordinance" was that they did not consider that to be part of the setback; every drawing they submitted was "clearly to the foundation of the building;" and 2) the building itself was, at one corner, "a foot to a foot and a half" into the variance. He referred the Board to a memorandum written to the Library Board from John E. Sylvester, Jr. dated March 12, 2010 that recounted what happened. Mr. Brudzinski referred the Board to a drawing he said had been used at the February 25, 2009 meeting; he stated he had made the presentation, although he did not prepare the application or the drawing. The drawing "had the correct size of the land that was being swapped." He said that Mr. Sylvester referred, in his memorandum, to a 28 ft. distance that included the link and the reading room; the drawing scaled "closer to 26 ft." He said the link changed size several times during the design process; as indicated in the memo, they "didn't fully deal with that problem, didn't understand it." The size of the link had also been changed during construction.

Mr. Brudzinski explained they had decided to check other things on the building they had planned on doing after they were informed of that problem. He said that two other issues were identified that would affect the building "not as it exists today" but were issues based on changes in configuration: the ramps got longer, and one area was made wider for turning and the stair configuration was moved further out. He explained that the stairs and ramp and inside lift were not part of "Phase I which is what is built today." He said they needed one more foot of variance on the front to complete the stairs with the additional area required at the building vestibule to have that meet ADA (Americans with Disabilities Act) requirements.

Another issue was lot coverage: the Board had "agreed to 25% in lieu of the normal 20%; the State required changes that would necessitate 25.6%." Mr. Brudzinski said they were able to solve a property issue between the Graybills and the Library; the Graybills were "the only affected party." He referred the Board to a signed copy of a letter from the Graybills dated February 3, 2010 that stated "they have no problem at all with the condition, as it exists, in the field." He said their request was that the Board "accept the building as its located," and referred the Board to "Exhibit A-1" (in their handout) from Harborside Residential Design that incorporated all the changes for the building, the storage room that was added at the back, the new reading room and the link, and all of the walkway, ramps and stairs. Their request was that the information and location of the changes, as documented by the engineer's survey, were acceptable. Mr. Brudzinski reiterated the Graybills "full support."

Mr. Perry confirmed the date of October 12, 2009 on the Harborside design just discussed; Mr. Brudzinski said that was the date the "design was finally set." There was discussion with regard to how the building overhang was shown on the drawing. He produced a larger version of the drawing "exactly the same" dated October 15, 2009 for the Board. There was further explanation about the drawing.

The Chair mentioned that the matter had been discussed hypothetically at a Board meeting two months earlier. It had been suggested that the Library contact the Board of Selectmen about a consent agreement. Mr. Knight interjected that he had watched a Selectmen's meeting about two weeks ago where they had decided it would be "best to throw the ball in our court." Mr. Knight stated the Library had come before the Board to seek a handicapped access variance, which, he thought "covers three fourths of the problem." The issue of the southern line would remain. Mr. Brudzinski agreed, and said the variance existed because of the land transfer.

The Chair read from Pg. 47 of the publication "Board of Appeals Decision Making," (dated May 23, 2007, published by Jensen, Baird, Gardner & Henry). His interpretation was that the Library should reach "some sort of agreement with the Selectmen and the Code Enforcement Office" before they went to the Board of Appeals for an "after-the-fact variance." Mr. Brudzinski said they were "directed" to go before the Board. There was discussion; he said that one of the issues was that the building on the existing survey "was not located on the site;" he thought it had been scaled. There was discussion about how the various surveys came about.

John Robbins, a Trustee of the Library, addressed the Board and stated surveyor's points were identified in the survey. He thought it should

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be noted that ADA “forced all these things to happen.” He explained that the State Fire Marshall’s Office “did things” that made them move the access from the reading room into the connector. He said that by doing that, it moved things “beyond what we knew” until the “Mortgage Plot Plan” was done; at that point, they notified the Town there was a problem. He reiterated that if they hadn’t had the ADA requirements, there would not have been the connector. There was discussion, and Mr. Brudzinski spoke from the audience.

The Chair thought there were two problems, and one was the existing building, which he considered “a self created hardship,” and said that the advice the Board received from the attorneys suggested “there should be more involvement than just ours.” Another issue was the handicapped access which the Board had come across before. [He referenced “Board of Appeals Decision Making,” Pg. 41 and said it stated there might be a way to deal with the issue; however, the Board should obtain legal advice.]

Mr. Knight referenced the Maine Municipal Association Board of Appeals Manual (the “MMA Manual”) and said there was a section that addressed “after-the-fact variances” [ref. Pg. 51 “Request for Variance ‘After the Fact’ ”]. He thought the Board could solve some of the Library’s issues, i.e. to grant a variance to fit the requirements set forth by the State Fire Marshall’s Office. He confirmed with Mr. Brudzinski there were four issues before the Board: the lot coverage and the front setback, which were not violations at this time, and the southern side setback that was two parts: the overhang and the fact that the building line and the property line were not parallel. He thought the Board could address the ADA issues “satisfactorily.” With regard to the other issues, Mr. Knight thought their “hands were tied” and said he would “urge” the Library, if it was agreed to by the Board, “to go back to the Selectmen” to examine whether it was possible to work out an agreement. Mr. Perry noted that the overhang was closer to the line than the building, and thought that would take precedence; Mr. Wells agreed. There was discussion. Mr. Wells stated that ADA always trumped any other local, state or federal regulation. He also stated that the Code Enforcement Office would not have an issue with the Board “granting any of this.”

Mr. Knight and the Chair discussed Pg. 41 of the “Board of Appeals Decision Making” book which referenced ADA issues. There was Board discussion. The Chair asked Mr. Wells his opinion about the basing of a variance “on a collection of drawings.” Mr. Wells suggested a survey, the intent of which would show “something that everybody understands;” the survey could be recorded with the variance. He stated the bank survey could not be recorded; it was not considered “a real boundary survey.” There was discussion; Mr. Knight said “the culprit” was the as-built process, and Mr. Brudzinski added there had been “weak information” initially. Mr. Knight presented the idea that the Library could return to the Board with a survey and they could table the matter until then; he confirmed, however, they were “held up financially.”

Ms. Bonarrigo addressed the Board and confirmed what the survey should show. Mr. Robbins addressed the Board and confirmed that a plot plan (as was discussed) was “not admissible in court.” The Chair clarified that, with reference to the variance, actual measurements would be required; they should also be acceptable to the Library. Mr. Brudzinski said they were comfortable with the measurements given on the mortgage document; the Chair suggested they have someone they trusted do a survey. Mr. Brudzinski said the “permit they gave us has an expiration date,” and also said they wanted to have “memorialized” the detailed drawing they now had. There was comment from the audience [Mr. Robbins] that the Library was “now in a five year envelope.”

Mr. Wells explained to the Board that it was not uncommon practice for the Code Enforcement Office to require an “as built survey” before a Certificate of Compliance was issued. Mr. Brudzinski said the mortgage survey dealt with the southern side, and asked what they wanted in terms of specificity on a drawing. The Chair said a drawing wasn’t really necessary as long as there was something that gave specific measurements with regard to the variances. There was discussion with regard to the ADA requirements (not the as-built). Mr. Knight said he would agree to grant a variance “under the ADA umbrella” with regard to the overhang; for that element, he thought they should go before the Selectmen, and that a presentation to them “would be aided by a professional drawing.”

Ms. Bonarrigo clarified that the Board had suggested they get a professional surveyor to do a drawing. There was some discussion. The Chair stated he thought the Selectmen would have to get involved with the as-built issue. Mr. Robbins suggested the Board could issue an approval subject to receipt of certain documents. There was discussion among the Board members.

Mr. Knight moved that, with regard to the overhang of the roof (the southern side of the Library building extension as it encroaches into the intended setback) the Board of Appeals should not review the matter and it should be referred to the Board of Selectmen to pursue a consent agreement. Mr. Perry seconded. The motion was clarified for Mr. Brudzinski. There was no further discussion; the motion carried 4-0.

Mr. Wells requested, for the record, that the Library be put on next month’s Board of Appeals agenda. The Chair moved to table the matter until next month’s meeting; Mr. Knight seconded. There was no further discussion; the motion carried 4-0.

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Other Business

Consideration of Minutes: Meeting of January 27, 2010

The Board voted 4-0 to adopt the Minutes of the January 27, 2010 meeting as printed.

Mr. Knight suggested the Board provide the Recording Secretary their Board training materials that had been used at the meeting in order to clarify the Minutes for the Board of Selectmen.

The Chair confirmed with the Board that they were comfortable with the three questions for the Town attorney to address; they all agreed.

The Chair adjourned the meeting at 9:10 PM.

Respectfully submitted,

**Melissa Moretti
Recording Secretary**